
OPINION OF THE PUBLIC ACCESS COUNSELOR

RENEE PUTMAN,
Complainant,

v.

ST. JOSEPH COUNTY PUBLIC COMMUNICATION
CONSORTIUM,
Respondent.

Formal Complaint No.
18-FC-36

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the St. Joseph County Public Communication Consortium (“Consortium”) violated the Access to Public Records Act¹ (“APRA”). The Consortium responded to the complaint through attorney Peter J. Agostino. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion

¹ Ind. Code §§ 5-14-3-1 to -10

to the formal complaint received by the Office of the Public Access Counselor on February 27, 2018.

BACKGROUND

Renee Putman (“Complainant”) filed a formal complaint alleging the St. Joseph County Public Communication Consortium (“Consortium”) violated the Access to Public Records Act (“APRA”) by failing to provide records within a reasonable time.

On February 18, 2018, Putman submitted a public records request to the Consortium seeking call data for the 2017 calendar year and the beginning of 2018. The Consortium’s executive committee had not yet met and this is typically when the reports are run for their review. The Consortium advised Putman they would not be available until the next Executive Board meeting, then scheduled for April 6, approximately 45 days after the request.

The Consortium responded by stating the program used to generate the reports was not currently being utilized due to some inaccuracies. A review of the program was scheduled before the April 6 meeting and this was the cause of the delay rather than an intentional withholding for a set time.

ANALYSIS

This formal complaint presents an issue of whether the St. Joseph County Public Communications Consortium's ("Consortium") response time constitutes a reasonable time as required by the Access to Public Records Act.

1. The Access to Public Records Act ("APRA")

APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Consortium is a public agency for purposes of APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the Consortium's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

1.1 Reasonable time

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency's disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, within a *reasonable time* after the request is received by the agency, the public agency must either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

In this case, the parties disagree about what constitutes a *reasonable time* as it relates to Putman's request. Notably, the APRA does not specifically define what constitutes a reasonable time as it pertains to the production of, or inspection of, responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is reasonable under one circumstance may not be reasonable in another. What is more, the production of responsive records need not materially interfere with the regular discharge of the functions and duties of the public agency. *See* Ind. Code § 5-14-3-7(a).

The request in this case is not complicated, historical, or complex. It appears as if a simple query inputted into a software program could historically generate the data requested. The problem, however, is with the current efficacy and reliability of the program.

Contrast this situation with *Opinion of the Public Access Counselor*, 17-FC-277 (2017) where the information requested was delayed simply because a board had not yet met to review and vote on the request. That does not appear to be the case in the current instance due to extraneous circumstances.

Pursuant to Indiana Code section 5-14-3-3(d), a public agency that maintains public records in an electronic data storage system must make reasonable efforts to provide a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the

agency's storage system. Implicit in the definition of reasonable efforts is the length to which an agency must go to generate the information. Because the software used to generate that information is temporarily ineffective, it stands to reason that a delay is inevitable. Due to the circumstances, the delay is justified and reasonable.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the St. Joseph County Public Communication Consortium has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor